IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 178 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

COMMISSIONER OF INCOME TAX

Versus

RAMPRASAD INVESTMENTS & TRADERS PVT. LTD.

Appearance:

MR MANISH R BHATT for Petitioner

RULE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 28/09/98

ORAL JUDGEMENT (per R.K. Abichandani, J.)

The applicant-Revenue has suggested the following questions in para 4 of its application seeking a direction on the Income Tax Appellate Tribunal to call for the statement of case in respect thereof under Sec. 256(2) of the Income-tax Act, 1961.

"1. Whether the Income Tax Appellate Tribunal is right in law and on facts in deleting the entire addition of Rs. 20,92,060 in respect of the alleged commission payment?

2. Whether the Income Tax Appellate Tribunal is right in law and on facts in not appreciating that the other two parties viz. M/s. Rajiv Traders Pvt. Ltd. and M/s. Anang Polufil Pvt. Ltd. were never produced by the assessee stating that they were not traceable, and therefore there was no question of issuing summons to them?

3. Whether the Income Tax Appellate Tribunal is right in law and on facts in not appreciating that Shri Anil Parikh and Yogesh Parikh had not rendered sufficient service due to their preoccupation/other engagements, and therefore the allowance of 10% of commission payment by the assessing officer was justified?

4. Whether the Income Tax Appellate Tribunal had correctly appreciated the facts on record so as to delete the entire addition of Rs. 20,92,060."

2. In an application which was made under Sec. 256(1) of the Act for forwarding these questions for the opinion of this court, the Tribunal, by its order dated 16.10.1997, rejected the same holding that its decision was based on appreciation of the facts of the case which led to a finding that services were rendered to the assessee for which the payments were made to the two private limited companies whose directors were examined.

3. The learned counsel for the Revenue drew our attention to the relevant material which was taken into consideration by the Assessing Officer which showed that the Managing Director of Y.K.M. Intermediates Pvt. Ltd. Shri Yogesh Parikh, who was doing business in colour chemicals, did not have expertise in the products which were to be sold. That witness had stated before the A.O. that he had accompanied the sales representatives of the assessee who visited the eye hospitals and eye experts and obtained orders for the company. The A.O., however, did not rely on his evidence by stating that he could have hardly spared any time to visit various doctors and that he did not possess any special qualifications and was engaged in manufacture of colour chemicals which had no connection with the marketing of microscopes for eye surgeons. As regards the other witness Dr. Anil Parikh,

who was a surgeon having a private practice for over 40 years and was a director in the other private limited company having worked in the field of neuro-surgery, E.N.T. operations as also orthopaedic surgery, the Assessing Officer found that he had not made any special efforts to get the products of the assessee company sold and there was no justification for paying him the amount of Rs. 1 lakh for indenting opthalamic products. The C.I.T. (Appeals) maintained the disallowances in respect of these two payments. The Tribunal, however, in the appeal of the assessee, after appreciating the material before it, found that Dr. Anil Parikh had received the retainership of the said amount. He had given names of some doctors whom he had contacted in connection with the assessee's business and introduced the product of the assessee. As regards the statement of Shri Yogesh Parikh, the Tribunal noted that he was a social activist connected with Lions and Rotary clubs and that he was connected with various eye camps organised by the doctors. He had stated that he had received commission between 7 to 10% and had indented microscopes worth Rs. 1,70,00,000/- in the relevant year. From the evidence on record, the Tribunal came to the conclusion that the two persons concerned did render services to the assessee and that it was on that count they received the remuneration. There was no cogent material to show that the payments which were made by the assessee were not commensurate with the services rendered by the two private limited companies. The payments were made by cheques and the recipient companies were assessed to tax in respect thereof.

4. The question whether an amount claimed as expenditure was laid down or expended wholly and exclusively for the purpose of the assessee's business has to be decided on the facts and in the light of the circumstances of each case. The Tribunal has on consideration of the material on record, come to its own findings regarding the payments having been made to these two private limited companies in consideration of the services rendered by them and since it was not shown that the amounts which were paid were in excess of the services which were rendered, the Tribunal found that the disallowance of these amounts by the lower authorities were not justified. The finding therefore does not raise any question of law.

5. The application is therefore rejected. Rule is discharged with no order as to costs.

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